

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

O2COOL, LLC,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO.
	)	
v.	)	
	)	JURY TRIAL DEMANDED
FIVE BELOW, INC.,	)	
	)	
Defendant.	)	

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**COMPLAINT**

Plaintiff O2COOL, LLC (“O2COOL”) states as follows for its Complaint against defendant Five Below, Inc. (“Five Below”):

**THE PARTIES**

1. O2COOL is a Delaware company with its principal place of business at 168 N. Clinton St., Suite 500, Chicago, IL 60661.
2. On information and belief, Five Below is a Pennsylvania corporation with its principal place of business at 1818 Market Street, Suite 1900, Philadelphia, PA 19103. On information and belief, Five Below is authorized to do and is doing business in Illinois and in this judicial district.

**JURISDICTION AND VENUE**

3. This is an action for patent infringement arising under the patent laws of the United States of America, 35 U.S.C. § 1, et. seq., including 35 U.S.C. § 271. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1331, in that one or more of

O2COOL's claims arise under the laws of the United States, as well as 28 U.S.C. §1338, granting district courts original jurisdiction over any civil action regarding patents.

2. On information and belief, this Court has specific and personal jurisdiction over Five Below pursuant to due process and/or the Illinois Long Arm Statute, due at least to Five Below's substantial business in this forum, including: (A) at least part of its infringing activities alleged herein; and (B) regularly doing or soliciting business, engaging in other persistent causes of conduct, and/or deriving substantial revenue from goods and services provided to persons and other entities in Illinois and this judicial district. This Court has personal jurisdiction over Five Below because Five Below's products, including but not limited to the products accused herein, are offered for sale and are being sold in the State of Illinois and in this judicial district. Defendants thereby committed the tortious acts described herein in Illinois, and in this judicial district, or otherwise established contacts with this judicial district sufficient to make the exercise of personal jurisdiction proper.

4. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(c) and 1400(b) because, on information and belief, Five Below is subject to personal jurisdiction here, a substantial part of the events or omissions giving rise to the claims occurred in this judicial district, and a substantial part of property that is the subject of the action is situated in this judicial district.

**COUNT I**  
**(Infringement of United States Patent No. 5,960,520)**

5. On September 9, 2008, the United States Patent and Trademark Office duly and legally issued United States Patent No. 5,960,520 (the "'520 Patent"), entitled "Clip Assemblies for Keeping Towels, Sheets and the Like in Place," to O2COOL. A copy of the '520 Patent is attached as Exhibit A.

6. O2COOL is the owner by assignment of all right, title and interest in and to the '520 Patent.

7. The '520 Patent is valid and enforceable.

8. O2COOL has complied with the marking requirements of 35 U.S.C. § 287 with respect to the '520 Patent.

9. Five Below is directly and/or indirectly infringing at least one claim of the '520 Patent in this judicial district and elsewhere by, among other things, making, using, offering for sale, selling and/or importing infringing products, including its infringing towel clips (the "Accused Products," examples of which are shown below), and will continue to do so unless enjoined by this Court.



10. Upon information and belief, Five Below's infringing activities were taken with full knowledge and with notice that it was in violation of O2COOL's patent rights. Furthermore, O2COOL expressly notified Five Below that Five Below is infringing the '520 Patent (see

Exhibit B), and O2COOL has tried to resolve this matter without judicial intervention. However, Five Below has refused to discontinue its infringing activities.

11. Five Below's infringement has damaged O2COOL and will continue to injure O2COOL, unless and until such infringement is enjoined by this Court.

12. Pursuant to 35 U.S.C. § 283, O2COOL is entitled to injunctive relief in accordance with the principles of equity to prevent the further infringement of its patent rights.

13. Pursuant to 35 U.S.C. § 284, O2COOL is entitled to damages adequate to compensate for Five Below's infringement, although in no event less than a reasonable royalty, together with interest and costs to be taxed to Five Below.

14. Five Below's infringing activity brings this cause within the ambit of the exceptional case contemplated by 35 U.S.C. § 285, and thus O2COOL requests an award of its attorneys' fees incurred in this action.

#### **PRAYER FOR RELIEF**

WHEREFORE, O2COOL respectfully requests that this Court enter:

- A. A judgment in favor of O2COOL that Five Below has infringed the '520 Patent;
- B. A permanent injunction enjoining Five Below, its members, officers, directors, agents, servants, affiliates, employees, divisions, branches, subsidiaries, parents and all others acting in active concert or privity therewith from direct, indirect and/or joint infringement of the '520 Patent pursuant to 35 U.S.C. § 283;
- C. An award of damages to O2COOL pursuant to 35 U.S.C. § 284 to compensate for Five Below's infringement of the '520 Patent, and a trebling of the damages awarded to O2COOL pursuant to 35 U.S.C. § 284;

D. An order finding this an exceptional case under 35 U.S.C. § 285 and awarding O2COOL its reasonable attorneys' fees incurred in this action; and

E. Such other relief as the Court may deem appropriate.

**DEMAND FOR JURY TRIAL**

O2COOL requests a trial by jury on all issues so triable, pursuant to Fed. R. Civ. P. 38.

Respectfully submitted,

**THOMPSON COBURN LLP**

Date: September 9, 2016

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